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DAVID KASFURTHER  
P.L. #1

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20546

**FILE:** B-187207

**DATE:** November 17, 1976

**MATTER OF:** Quaker Business Associates, Inc.

**DIGEST:**

Where original bid opening was extended due to requests by several potential bidders and where through inadvertent mistake two bids were opened on original opening date and their prices disclosed, decision of contracting officer to cancel invitation and readvertise was not improper.

Invitation for bids No. N00104-76-B-0703 was issued to 17 firms by the Naval Ships Parts Control Center. Because several firms requested that the May 11, 1976, bid opening date be extended, amendment No. 0001 was issued to extend that date to May 26. Allegedly, through an internal distribution error, the Bid Opening Unit of the activity did not receive the amendment until after it had opened the two bids that had been received as of May 11. Quaker Business Associates, Inc. (Quaker), submitted the lower of these two bids and protests the events that followed this opening.

After the bid opening, the contracting officer determined that award should not be made to Quaker and that the invitation should be canceled pursuant to paragraph 2-404.1(b)(viii) of the Armed Services Procurement Regulation (1975 ed.) so that more competitive bidding (since several other potential bidders had requested the extension a reasonable expectation therefor was felt to exist) might be achieved on the procurement. Accordingly, the requirement was re-solicited under invitation for bids No. N00104-76-B-0874. As of the August 2 bid opening date, eight bids had been received. Of these bids, four contained prices lower on all items than those of Quaker, which had submitted the same prices it had originally bid; every bid contained prices for two items lower than those of Quaker. The amount of bids and the ranges of the prices submitted are felt by the agency to support the contracting officer's determination to cancel the original invitation and readvertise so as to achieve maximum competition.


B-187207

It is the position of Quaker that no basis existed for taking the course of action adopted and that once its bid was opened and its bid prices publicly made known the contracting activity was obligated to make award to it as low bidder. It is also contended that since the Quaker bid price was lower than the cost of the previous contract, its bid price was reasonable, and that this should have been sufficient reason to have justified an award to it.

Generally, the discretion afforded an agency to determine that it is in the public interest to reject all bids and to readvertise is limited only by the necessity that after bids have been publicly opened a compelling reason must exist to cancel the invitation. Consideration must be given both to the best interest of the Government and to whether bidders have been treated fairly and equally. Edward B. Friel, Inc.; Free State Builders, Inc.; Michael O'Connor, Inc., B-183579, November 20, 1975, 75-2 CPD 333.

Giving consideration to both of these factors, we must conclude that in canceling the original invitation the contracting officer was acting within the reasonable ambit of the discretion afforded him. It was fairly obvious from the outset that the full and free competition contemplated by the formal advertising procedures had not been obtained inasmuch as it was known that several bidders, who most probably intended to bid in view of their requests that the bid opening date be extended, had not submitted bids. It would appear also that by permitting the two bids opened on May 11 to constitute the only ones that would be considered for award each bidder who had not submitted a bid by May 11 in reliance on the contracting officer's intention to extend the bid opening date would have been discriminated against and unfairly and adversely affected. AiResearch Manufacturing Company; Bell & Howell, B-180437, May 6, 1974, 74-1 CPD 228; Scott Graphics, Incorporated; Photomedia Corporation, B-183274, May 19, 1975, 75-1 CPD 302.

In view of the above, we cannot object to the cancellation of the invitation and the readvertisement of the procurement. Accordingly, we must deny the protest.

  
Deputy Comptroller General  
of the United States